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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/554,269	06/29/2000	MANFRED BRAUNER	TPP-30873	2242

7590 11/25/2003

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EXAMINER

EGAN, BRIAN P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/25/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

CL014

Advisory Action

Application No.

09/554,269

Applicant(s)

BRAUNER, MANFRED

Examiner

Brian P. Egan

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): the 35 U.S.C. 112, second paragraph rejection of claim 23.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-15, 17-22, 24 and 25.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

ADVISORY ACTION

1. Applicant's arguments filed October 31, 2003 have been fully considered but they are not persuasive.

First, the Examiner notes that the after final amendment, paper no. 13, has been entered by the Examiner. Entrance of the amendment overcomes the 35 U.S.C. 112, second paragraph rejection of claim 23 from the previous office action and the Examiner has therefore withdrawn this rejection.

Second, the Examiner maintains each of the 35 U.S.C. 103(a) rejections from the previous office action, paper no. 11. The Applicant's only contention is that the WO 97/39954 reference fails to qualify as prior art under 35 U.S.C. 102(b) and 35 U.S.C. 102(a). The Examiner respectfully disagrees. The statutory provisions of 35 U.S.C. 102(b) reads as follows:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

As outlined in MPEP 1893.03(b), the effective filing date of a 371 application is the filing date of the international application. Here, PCT/SE98/0199 was filed on November 4, 1998. Although SE 9704153-7 was filed on November 13, 1997, the Applicant is not afforded this date for purposes of 35 U.S.C. 102(b). Any prior art reference with a filing date more than one year before that of the international application date (11/4/98) is a reference under 35 U.S.C. 102(b). The prior art reference used by the Examiner (WO '954) was published on October 30, 1997, and therefore qualifies as a 35 U.S.C. 102(b) reference. Thus, the Examiner maintains that

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WO '954 is a valid reference and further maintains the validity of each of the 35 U.S.C. 103(a) rejections from the previous office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Egan whose telephone number is 703-305-3144. The examiner can normally be reached on M-F, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


BPE 11/20/03


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 12/24/03